

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PRESENT: The Honorable **ROBERT J. BRYAN**, United States District Judge

Jean Adamson
Courtroom Deputy

Julaine V. Ryen
Court Reporter

Civil Minutes

DATE: SEPTEMBER 3, 1996

CASE NUMBER: C94-5238RJB

SPENCER v. KLAUSER

ATTORNEY FOR PLAINTIFF(S)
Peter Camiel

ATTORNEY FOR DEFENDANT(S)
John Samson/Donna Mullen

PROCEEDING: EVIDENTIARY HEATING RE: HABEAS PETITIONI -- Day 1.

Petitioner's exhibits 1-17, 22-25 and 28,29 are ADMITTED BY STIPULATION

Respondent's exhibit A-1 thru A-13 ADMITTED BY STIPULATAION

Argument re: admission of exhbits 18, 19, 20, 21, 26,27; all admitted with
limitations stated by court.

Witnesses excluded;

10:00 Opening Statements

Petitioner calls Sharon Krause; James Davidson; Karen Klein; Clyde Raymond
Spencer (court advises re: right to testify)

Court to resume 1:30 9/4/96

Recess 4:30

DEPOSITION OF SHARON KRAUSE;

DEPOSITION OF KEVIN B. McGOVERN, Ph.D. in Lieu of Live Testimony

EXHIBIT

A

5

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PRESENT: The Honorable **ROBERT J. BRYAN**, United States District Judge

Jean Adamson
Courtroom Deputy

Julaine V. Ryen
Court Reporter

Civil Minutes

DATE: SEPTEMBER 4, 1996

CASE NUMBER: C94-5238RJB

SPENCER v. KLAUSER

ATTORNEY FOR PLAINTIFF(S)
Peter Camiel

ATTORNEY FOR DEFENDANT(S)
John Samson/Donna Mullen

PROCEEDING: EVIDENTIARY HEATING RE: HABEAS PETITIONI -- Day 2.

1:30 Clyde Raymond Spencer resumes stand; Dr. Lawrence Halpern;
Dr. Manuel Galaviz;

Recess 4:30

DEPOSITION OF DR. LAWRENCE HALPERN;

DEPOSITION OF SHIRLEY JEAN SPENCER. in Lieu of Live Testimony

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PRESENT: The Honorable **ROBERT J. BRYAN**, United States District Judge

Jean Adamson
Courtroom Deputy

Julaine V. Ryen
Court Reporter

Civil Minutes

DATE: SEPTEMBER 5, 1996

CASE NUMBER: C94-5238RJB

SPENCER v. KLAUSER

ATTORNEY FOR PLAINTIFF(S)
Peter Camiel

ATTORNEY FOR DEFENDANT(S)
John Samson/Donna Mullen

PROCEEDING: EVIDENTIARY HEARING RE: HABEAS PETITIONI -- Day 3.

9:30 Petitioner calls Dr. Kathryn Magee (by phone)

Respondent calls Dr. Henry H. Dixon;

Petitioner calls James Peters, AUSA Idaho,;

Respondent calls Judge James Rulli; 3:50 pltf rests;

Recess 4:00

7

79

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PRESENT: The Honorable **ROBERT J. BRYAN**, United States District Judge

Jean Adamson
Courtroom Deputy

Julaine V. Ryen
Court Reporter

Civil Minutes

DATE: SEPTEMBER 6, 1996

CASE NUMBER: C94-5238RJB

SPENCER v. KLAUSER

ATTORNEY FOR PLAINTIFF(S)
Peter Camiel/Peter Mair

ATTORNEY FOR DEFENDANT(S)
John Samson/Donna Mullen

PROCEEDING: EVIDENTIARY HEARING RE: HABEAS PETITIONI -- Day 3.

1:00 Respondent call Rebecca Tritt Weister, M.D.;

2:40 Respondent rests; Closing Arguments

For the reasons stated orally, on the record, the court makes a PARTIAL FINDING and further RESERVES FINAL RULING and will issue a written order or render an oral decision as soon as possible.

Recess 4:30

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FILED
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SEP 16 1996
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY
Docket No. C94-5238RJB
Tacoma, Washington
September 3, 1996
9:30 a.m.

CLYDE RAYMOND SPENCER,)
)
Petitioner,)
)
v.)
)
JOSEPH KLAUSER, Warden,)
)
Idaho State Institution;)
)
CHRISTINE GREGOIRE, Attorney)
)
General, State of Washington.)
)
Respondents.)
)

VOLUME I
TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE ROBERT J. BRYAN
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

For the Petitioner: PETER A. CAMIEL
Mair, Abercrombie, Camiel &
Rummonds
710 Cherry Street
Seattle, Washington 98104

For the Respondents: JOHN J. SAMSON
DONNA H. MULLEN
Assistant Attorneys General
Post Office Box 40116
Olympia, Washington 98504-0116

Court Reporter: Julaine V. Ryen
Post Office Box 885
Tacoma, Washington 98401-0885
(206) 593-6591

Proceedings recorded by mechanical stenography, transcript
produced by Reporter on computer.

ORIGINAL 97

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FILED
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JAN 16 1997
CLERK U.S. DISTRICT COURT
BY WESTERN DISTRICT OF WASHINGTON AT TACOMA
C9 DEPUTY

CLYDE RAYMOND SPENCER,

Docket No. C9-5238RJB

Petitioner,

Tacoma, Washington

v.

September 4, 1996

1:30 p.m.

JOSEPH KLAUSER, Warden,

Idaho State Institution;

CHRISTINE GREGOIRE, Attorney

General, State of Washington.

Respondent.

VOLUME II

TRANSCRIPT OF TRIAL

BEFORE THE HONORABLE ROBERT J. BRYAN

UNITED STATES DISTRICT JUDGE.

APPEARANCES:

For the Petitioner:

PETER A. CAMIEL

Mair, Camiel & Kovach, P.S.

710 Cherry Street

Seattle, Washington 98104

For the Respondents:

JOHN J. SAMSON

DONNA H. MULLEN

Assistant Attorneys General

Post Office Box 40116

Olympia, Washington 98504-0116

Court Reporter:

Julaine V. Ryen

Post Office Box 885

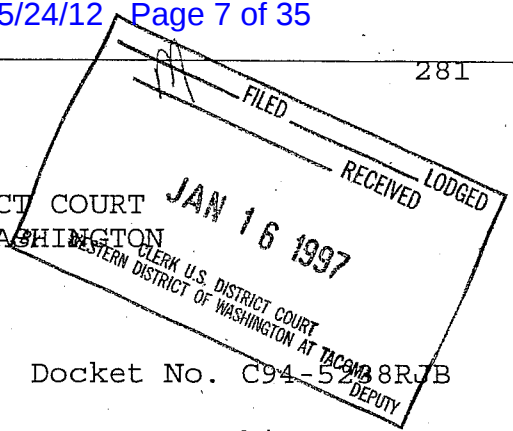
Tacoma, Washington 98401-0885

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ORIGINAL

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA



CLYDE RAYMOND SPENCER,

Petitioner,

v.

JOSEPH KLAUSER, Warden,
Idaho State Institution;
CHRISTINE GREGOIRE, Attorney
General, State of Washington.

Respondent.

Docket No. C94-528RJB

Tacoma, Washington

September 5, 1996

9:30 a.m.

VOLUME III
TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE ROBERT J. BRYAN
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

For the Petitioner:

PETER A. CAMIEL
Mair, Camiel & Kovach, P.S.
710 Cherry Street
Seattle, Washington 98104

For the Respondents:

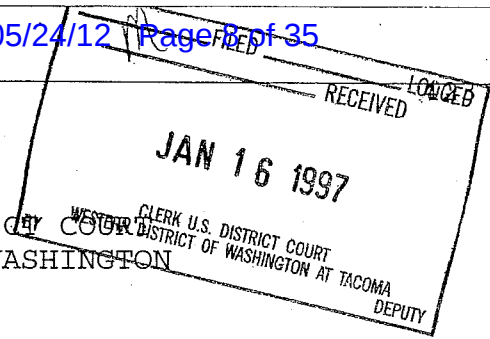
JOHN J. SAMSON
DONNA H. MULLEN
Assistant Attorneys General
Post Office Box 40116
Olympia, Washington 98504-0116

Court Reporter:

Julaine V. Ryen
Post Office Box 885
Tacoma, Washington 98401-0885
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Proceedings recorded by mechanical stenography, transcript
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ORIGINAL 99



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

1	CLYDE RAYMOND SPENCER,)	Docket No. C94-5238RJB
2)	
3)	
4	Petitioner,)	Tacoma, Washington
5)	September 6, 1996
6	v.)	1:00 p.m.
7)	
8	JOSEPH KLAUSER, Warden,)	
9	Idaho State Institution;)	
10	CHRISTINE GREGOIRE, Attorney)	
11	General, State of Washington.)	
12)	
13	Respondent.)	

VOLUME IV
TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE ROBERT J. BRYAN
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

For the Petitioner: PETER A. CAMIEL
PETER MAIR
Mair, Camiel & Kovach, P.S.
710 Cherry Street
Seattle, Washington 98104

For the Respondents: JOHN J. SAMSON
DONNA H. MULLEN
Assistant Attorneys General
Post Office Box 40116
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Court Reporter: Julaine V. Ryen
Post Office Box 885
Tacoma, Washington 98401-0885
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Proceedings recorded by mechanical stenography, transcript
produced by Reporter on computer.

ORIGINAL 100

1 his motivation for giving those kinds of responses. I just
2 don't know.

3 THE COURT: Other questions of the doctor?

4 MS. MULLEN: No further questions, Your Honor.

5 MR. CAMIEL: No, Your Honor.

6 THE COURT: Thank you, Doctor.

7 THE WITNESS: Thank you.

8 THE COURT: You may be excused.

9 (Witness excused.)

10 MR. CAMIEL: We have another witness ready.

11 MANUEL R. GALAVIZ, PETITIONER'S WITNESS, SWORN OR AFFIRMED

12 DIRECT EXAMINATION

13 BY MR. CAMIEL:

14 Q. Could you please state your name and spell your last name.

15 A. Manual Raymond Galaviz. G-a-l-a-v-i-z.

16 Q. And it's Dr. Galaviz?

17 A. Yes.

18 Q. Doctor, what's your professional address?

19 A. My professional address, 123 -- 12607 Southeast Mill Plain
20 Boulevard.

21 Q. What's the nature of your employment?

22 A. I'm a family physician.

23 Q. Doctor, where did you attend medical school?

24 A. University of California, Davis.

25 Q. And what year did you finish up medical school?

1 A. 1980. June 1980.

2 Q. And then where did you go for your residency?

3 A. I did my residency at Group Health Cooperative of Puget
4 Sound up in Seattle.

5 Q. What years did you serve your residency?

6 A. From 1980 to 1983.

7 Q. Was there a particular focus of your residency?

8 A. It was a family practice residency, so it was pretty
9 general.

10 Q. And what year did you actually begin, become licensed to
11 practice medicine?

12 A. In 1983.

13 Q. And where did you begin your practice?

14 A. I started at -- with Kaiser Permanente in Vancouver,
15 Washington.

16 Q. And are you still with Kaiser Permanente in Vancouver?

17 A. Yes, I am.

18 Q. And what is your specialty, if you have one?

19 A. I specialize in family practice.

20 Q. All right.

21 Doctor, as a part of your medical training going through
22 medical school or during your residency, did you have occasion
23 to receive training regarding diagnosing child abuse?

24 A. Not specifically. It was just mainly general pediatrics.

25 Q. And in terms of your medical training, did you receive

1 training regarding diagnosing and treating injuries such as
2 bruises?

3 A. Yes.

4 Q. Lacerations?

5 A. Yes.

6 Q. Tears in the tissue?

7 A. Yes.

8 Q. Doctor, I would like you to turn your attention to 1985, if
9 you would, please. In the blue notebook in front of you, if you
10 could turn to tab number 2, which is Exhibit No. 2.

11 Do you recognize what the documents are under tab No. 2?

12 A. These are my progress notes from a visit March 6th, 1985.

13 Q. Who is your patient?

14 A. Matthew Hansen.

15 Q. Have you been recently asked to review these notes?

16 A. Yes, I have.

17 Q. How was it that Matthew Hansen became your patient on
18 March 6th, 1985?

19 A. I believe they called for an appointment and happened to be
20 on my schedule, like many other patients.

21 Q. Do you know whether or not Matthew Hansen was referred to
22 you by another physician?

23 A. I do not.

24 Q. Do you have a recollection of your meeting with Mr. Hansen,
25 Matthew Hansen?

1 A. As far as a photographic appearance, no. Not specifically.

2 Q. Apart from the -- independent of the medical record, which
3 is Exhibit No. 2, do you remember the occasion that you met with
4 Matthew Hansen?

5 A. Vaguely.

6 Q. Do you remember why it was that he had -- he or his parent
7 had made an appointment to meet with you?

8 A. Can I refer to my progress notes?

9 Q. Yes.

10 A. Well, it was specifically to look for any physical evidence
11 of injury.

12 Q. All right. Matthew Hansen, I take it, wasn't a regular
13 patient of yours?

14 A. Not that I recall at this time. I have thousands of
15 patients.

16 Q. You don't recall that you had ever seen him before this
17 time?

18 A. Not that I recall now.

19 Q. You indicated that the purpose for the appointment was to
20 look for evidence of injury. Were you given a suspected cause
21 as to why there might be some injury to look for?

22 A. I was given the information that Matthew had been sexually
23 abused.

24 Q. And were you given information as to the type of sexual
25 abuse that was being alleged?

1 A. The information I got was that he was sexually abused anally
2 and orally.

3 Q. Did you receive information that he had been -- that the
4 sexual abuse had occurred by an adult male, his stepfather?

5 A. Yes.

6 Q. Do you recall what type of examination you did when Matt
7 Hansen came in to your office?

8 A. I initially did a questioning about general information,
9 and proceeded to an exam from the head, neck, down to the
10 muscular-skeletal system.

11 Q. Do you recall when Matt Hansen came in, was he accompanied
12 by his mother?

13 A. Yes, she was, I believe, according to my note.

14 Q. Do you recall her being present during your examination of
15 her son?

16 A. I believe so.

17 Q. Do you recall any conversations with Matt Hansen's mother,
18 Shirley Spencer, regarding how it was that she got to you?

19 A. According to my notes, Matthew had been in counseling and
20 the counselor had learned that Matthew had described anal and
21 oral sexual manipulation.

22 Q. Do you recall whether or not Matthew Hansen's mother
23 indicated whether or not she had been in touch with police
24 officers or whether police were involved in the investigation of
25 alleged abuse of Matt?

1 A. I do not recall that.

2 Q. You indicated you conducted an examination. You started
3 from the head and worked your way down?

4 A. Yes.

5 Q. Where did the examination take place?

6 A. In my office there in Vancouver.

7 Q. You indicated you started with the head and you worked your
8 way down. At some point, did your examination include a genital
9 and anal examination?

10 A. Yes, it did. An external genital and anal exam.

11 Q. Why were you conducting a genital and anal examination?

12 A. For -- well, in a normal five-year pediatric exam, that's
13 part of the exam, but in this case also looking for external
14 injury, trauma.

15 Q. What kinds of external injury or trauma were you looking
16 for?

17 A. Anything out of the ordinary.

18 Q. Were you looking for things such as bruises?

19 A. Yes, if they were present.

20 Q. Or redness?

21 A. Yes, if it was present.

22 Q. Or swelling?

23 A. Yes.

24 Q. Lacerations?

25 THE COURT: Counsel, you're going at this as though it

1 wasn't 4:31. I assume that Dr. Galaviz would like to get back
2 to Vancouver tonight, if you can finish in four, five minutes.

3 MR. CAMIEL: I will do the best I can, Your Honor.

4 THE COURT: I can tell you what he's going to say. I'm
5 not sure why we are going through all this. He did a physical
6 exam and it came up negative.

7 Right?

8 THE WITNESS: Yes.

9 THE COURT: What else do you have to add?

10 Q. (By Mr. Camiel) Doctor, when you conducted the anal
11 examination, how did you do that?

12 A. I simply looked externally.

13 Q. How was Matthew positioned?

14 A. I don't recall exactly. I generally try to make it as least
15 traumatic to the patient as possible because that's very
16 embarrassing to them, and I simply generally look when they are
17 standing.

18 Q. Is it possible you had Matthew on your lap or over your knee
19 when you conducted that exam?

20 A. No.

21 Q. Had you conducted exams where there had been allegations of
22 child sexual abuse before this exam that you conducted?

23 A. Since I'm not -- that's not my area, and generally it's an
24 office exam, I can't recall. Maybe a handful in my five years
25 of being a physician.

1 Q. You submitted an affidavit for the attorney general. Do you
2 recall your affidavit that you submitted?

3 A. Yes, I do.

4 Q. Do you recall indicating to the attorney general that you
5 had -- you had been minimally exposed to child abuse cases?

6 A. Yes.

7 Q. When Shirley Spencer came in and explained to you what the
8 allegations were involving Matt, did you feel the need to refer
9 him to another physician to conduct the exam, or did you feel
10 that you would be able to conduct the exam and determine whether
11 or not there were any present injuries that might have been
12 caused by the alleged sexual abuse?

13 A. The reason for the visit that day was to simply look to see
14 if there was any obvious physical injury to this child.

15 Q. Did you see anything that even appeared to be suspicious as
16 having been caused by child abuse, sexual abuse?

17 A. I recall, according to my note, that he was just -- kind of
18 kept to himself and was quiet, but as far as physical, visual,
19 other evidence, I didn't recall any.

20 Q. Do you believe that if you had -- if there had been physical
21 injury present in Matt's genital or anal area that you would
22 have been able to observe that at the time you conducted the
23 exam?

24 A. Again, I'm not an expert in this, but I -- if it was there
25 obvious, I would have picked it up. Externally.

1 Q. After the exam was conducted, do you recall whether or not
2 you were ever contacted by any detectives or police officers
3 concerning your examination of Matt?

4 A. I don't believe so.

5 Q. Did you make a report, as is required by statute, concerning
6 suspected child abuse to anyone?

7 A. I don't recall.

8 Q. Were you familiar at that time with a statutory requirement
9 that you report suspected child abuse?

10 A. Yes. But I think I was in the intermediate. I wasn't
11 the -- from my recollection, I wasn't -- this was already in the
12 process. It wasn't new.

13 Q. So it was your understanding that it had already been
14 reported?

15 A. The fact that the patient had been with a counselor told me
16 that this was kind of an ongoing thing, part of an ongoing
17 process.

18 Q. Did you have any understanding as to whether the police or
19 law enforcement had been notified?

20 A. I believe so.

21 Q. You believe you understood that they had been notified?

22 A. Yes. As far as having been with a counselor, I believe they
23 somehow were involved. If that was -- that was part of their
24 job.

25 Q. Did you refer Matt Hansen to anyone else for any additional

1 or follow-up examination?

2 A. According to my exam and my plan, I did not have that in my
3 plan.

4 Q. If you had seen something that you were not certain about
5 based on your level of experience, would you have referred him
6 to another physician who had more experience?

7 A. I think my job was just strictly to look for physical
8 evidence of injury, and so since I did not find any obvious
9 external evidence, at that point then I didn't pursue it any
10 further.

11 MR. CAMIEL: Thank you. That's all I have.

12 CROSS-EXAMINATION

13 BY MR. SAMSON:

14 Q. Dr. Calaviz, I just have some short questions.

15 First, you're not an expert in the area of child abuse?

16 A. No, I'm not.

17 Q. You've only been minimally exposed to that?

18 A. That's correct.

19 Q. And at the time, you had only been a practicing doctor who
20 had finished residency for about a year and a half?

21 A. That's correct.

22 THE COURT: So far I already heard those three
23 answers.

24 MR. SAMSON: Yes, Your Honor.

25 Q. (By Mr. Samson) Doctor, you testified that if there had --

1 THE COURT: I heard what he testified about. What's
2 the question?

3 MR. SAMSON: Your Honor, I'm going to get to it.

4 THE COURT: Don't repeat his testimony. Just ask the
5 question.

6 MR. SAMSON: Yes, Your Honor, but I believe --

7 Q. (By Mr. Samson) You said there were no physical injuries
8 observable at the time. Could those physical injuries have
9 healed before you did the exam?

10 A. Yes. And -- yes, any injury could have healed. My
11 information was it was three weeks prior to that.

12 Q. And did you previously say in an affidavit, "I believe that
13 any lacerations or swelling that may have been present directly
14 after the alleged abuse would have healed prior to my
15 examination"?

16 A. That's correct.

17 Q. And if there were internal injury or trauma, you would not
18 have been able to have observed that?

19 A. Not with my exam.

20 Q. And the main concern of this exam was to make sure the child
21 was presently okay, the child was not injured?

22 A. That was my understanding of the exam.

23 Q. So if the child was injured, something could have been done
24 to heal the child?

25 A. That's correct.

1 (Defendant present.)

2 MORNING SESSION.

3 THE COURT: I understand we have Dr. Magee on the
4 phone.

5 THE CLERK: Yes.

6 THE COURT: Is this your next witness?

7 MR. CAMIEL: Yes.

8 THE COURT: Dr. Magee, can you hear me all right?

9 DR. MAGEE: Can you speak a little louder?

10 THE COURT: Yes, I can. I can speak as loud as you
11 want.

12 DR. MAGEE: Okay. That's fine.

13 THE COURT: We are in court. I'm Judge Bryan. Mr.
14 Camiel is here representing Mr. Spencer, and Mr. Samson and Ms.
15 Mullen are here representing the state.

16 You're a witness called by Mr. Camiel, and the first --
17 first, it's my understanding here that we have all stipulated
18 that your testimony could be taken by telephone conference
19 call. You should understand that the rules are the same as if
20 you were actually present here in court.

21 Do you understand that?

22 DR. MAGEE: Yes.

23 THE COURT: The first thing I must do is to put you
24 under oath.

25 KATHRYN MAGEE, PLAINTIFF'S WITNESS, SWORN OR AFFIRMED

24

EXHIBIT B-2

1 THE COURT: All right. Mr. Camiel, you may examine.
2 Counsel, if you need to get closer to hear, feel free to
3 move around as you might need to. I think it's coming through
4 all right soundwise, but if you need to get closer, do so.

5 MR. CAMIEL: Your Honor, before actually beginning my
6 questioning, I have an additional exhibit that is stipulated to,
7 which is an affidavit of Dr. Magee which I expect she will have
8 in front of her.

9 THE COURT: All right. And this is what number?
10 Exhibit 31.

11 You have no objection?

12 MR. SAMSON: No objection, Your Honor.

13 THE COURT: 31 may be admitted.

14 (Exhibit No. 31 was admitted.)

15 THE COURT: Is this my copy?

16 MR. CAMIEL: It is, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. CAMIEL:

19 Q. Good morning, Dr. Magee. This is Peter Camiel speaking.

20 A. Good morning.

21 Q. We have talked before a couple times, haven't we?

22 A. I can barely hear you, Mr. Camiel. Can you come closer.

23 Q. I will.

24 Doctor, you're speaking to us today from what location?

25 THE COURT: Louder.

1 Q. (By Mr. Camiel) Doctor, where are you speaking to us from?

2 A. Tuba City Indian Medical Center in Tuba City, Arizona.

3 Q. What is your position with that medical center?

4 Doctor --

5 THE COURT: Can you hear, Doctor?

6 THE WITNESS: Did he ask me something else?

7 THE COURT: We will try again here.

8 Q. (By Mr. Camiel) Doctor, what is your position at the Tuba
9 City Medical Center?

10 A. I'm the medical director of the outpatient department.

11 THE COURT: Excuse me. We don't have her name on the
12 record.

13 Will you give us your name, Doctor.

14 THE WITNESS: Kathryn, K-a-t-h-r-y-n, Magee, M-a-g-e-e,
15 M.D.

16 Q. Doctor, could you tell us about your college education and
17 medical training.

18 A. Sure. I attended the University of California at Berkeley
19 for my undergraduate, and I graduated there in 1975 with a
20 degree in biological sciences. And then I attended the
21 University of Rochester School of Medicine in Rochester, New
22 York, and graduated there in 1979.

23 No, I'm sorry. I've got those dates wrong. I finished
24 college in '79. I finished medical school in '83.

25 Q. Following the completion in medical school, Doctor, where

1 did you serve your residency?

2 A. At the University of California Davis in the medical center
3 in Sacramento.

4 Q. Doctor, as a part of your residency rotation, did you work
5 conducting child sex abuse examinations at the University of
6 California Davis Medical Center in Sacramento?

7 A. Yes. It was part of the pediatric clinic rotation that we
8 would do these kind of exams.

9 Q. What is your current specialty or areas in specialty?

10 A. I trained and board certified in family medicine.

11 Q. And you also practice in the area of pediatrics?

12 A. I do some pediatrics as well. I mean, family medicine
13 incorporates actually obstetrics, pediatrics, and adult
14 medicine.

15 Q. Doctor, when you were working at the University of
16 California Davis Medical Center conducting child abuse
17 examinations, was that -- were those type of examinations
18 routinely conducted by residents?

19 A. Yes. Always.

20 Q. Was there a supervising physician that you worked under?

21 A. There was -- well, there were attending physicians
22 available, but they did not routinely do the exam or take part
23 in it at all.

24 Q. Did you receive, prior to going to work at the University of
25 California Davis, training with regard to child sexual abuse?

1 A. Well, we had had brief lectures probably in both medical
2 school and residency with slides and things like that regarding
3 child abuse exams.

4 Q. And did that training, did that training include information
5 regarding diagnosing child sex abuse?

6 A. Yes.

7 Q. Did the training include information concerning the conduct
8 of sexual abuse examinations?

9 A. I'm sorry?

10 Q. Did the training include information regarding how to
11 conduct child sex abuse examinations?

12 A. Yes, although it wasn't extensive training. It was -- but
13 it went over the general portions of the exam, yes.

14 Q. You indicated that the training consisted of both lectures
15 and slide presentations.

16 A. Yes.

17 Q. Who were the lectures conducted by?

18 A. Usually pediatric attending physicians.

19 Q. And were these individuals people who had some expertise in
20 the area of child sexual abuse?

21 A. Yeah. I can't say that I can actually remember any of them,
22 but I -- yeah, most of them would have some expertise in child
23 abuse. They usually were both -- I mean, they were not just
24 sexual abuse. They were child abuse and sexual abuse lectures.

25 Q. These slide presentations that you received, what were the

1 general nature of those?

2 A. Well, they would have slides of children with various
3 injuries, and cigarette burns, bruising. Also some slides of
4 the pelvic area.

5 Q. And were those slides examples of children that had in fact
6 been sexually abused?

7 A. Yes.

8 Q. Were those slides used to demonstrate abnormalities that
9 might be found during a child sexual abuse examination?

10 A. Yes.

11 Q. Doctor, prior to actually beginning to conduct on your own
12 child sexual abuse examinations, was there a period of time
13 where you observed these being done by other individuals?

14 A. I believe that as an intern, which is the first year
15 residency, that I would have observed a couple of these exams.
16 But I -- I can't say for certain.

17 Q. Doctor, do you have now any independent recollection of your
18 examination of Kathryn Spencer?

19 A. None.

20 Q. Do you have in front of you today the medical records that
21 pertain to Kathryn Spencer?

22 A. Yes.

23 Q. We're going to be referring to those as Exhibit No. 1 here
24 in court.

25 Doctor, apart from being able to look at the record and

1 being able to see what the record says, do you recall Kathryn
2 Spencer actually coming to the clinic with her mother?

3 A. No.

4 Q. Does the record in front of you, does that consist of three
5 pages?

6 A. Yes.

7 Q. Doctor, I would like to start out with regard to the record
8 by asking you if you can identify, going page by page, the
9 information that you actually placed on the record?

10 A. Okay. On page 1, it's my handwriting -- the only place my
11 handwriting appears is under "Reporting Party's Name" and "UCD
12 Department" and "Phone," which is, I guess, the fourth line.

13 Q. Do you know who would have filled out the rest of the
14 report?

15 A. A social worker.

16 Q. All right. And then going on to page 2.

17 A. Actually on page 1, also, my handwriting is at the very
18 bottom, "Print Last Name," "Signature," and "Date of Report."

19 On page 2, all of it is my handwriting.

20 And on page 3, the top part is not mine. My handwriting is
21 -- appears in the middle of the page under "Diagnostic
22 conclusion(s)," two lines, and then again at the bottom of the
23 page with my name and signature.

24 Q. On page 3, in the top portion of that page under the section
25 that is labeled "Maltreatment History," would that also have

1 been filled out by the social worker?

2 A. Yes, although I wrote in here, "Mother said," at the very
3 top. But the rest of it is filled out by the social worker.

4 Q. Doctor, did you have a general routine that you followed
5 when you conducted these examinations?

6 A. Yes. Basically, it would consist of asking sort of brief
7 questions of the child, although the social worker normally
8 would see them first and have a history; and followed by an exam
9 that basically followed the second page of the medical records;
10 and then the social worker would take care of follow-up and any
11 further counseling, appointments.

12 Q. Doctor, if I could have you turn to the second page, then,
13 of the examination, or report.

14 A. Okay.

15 Q. What, based on your review of that report, does that tell us
16 with regard to what you did concerning your examination of
17 Kathryn Spencer and what your observations were?

18 A. Well, the first observation was that the child was cowering
19 in her mother's lap, which encompassed the general appearance.
20 And then she was measured as far as her height and weight
21 compared to percentiles for her age for that.

22 Q. Doctor, if I could stop you for one moment on that, on that
23 point. Does this child appear to be a particularly small child?

24 A. She's still within normal limits.

25 Q. You've got --

1 A. She's actually a little thin for her height, but she's
2 completely within normal limits. It's only when you fall off of
3 the growth curve completely that it's considered abnormal.

4 Q. All right.

5 A. Which means you're below the zero percentile.

6 Q. All right. If you could continue please. Thank you.

7 THE COURT: Give her a question.

8 Q. (By Mr. Camiel) Doctor, after noting the height and weight,
9 what else did you do in terms of your examination?

10 A. Well, based on this record, as I said, I don't recall. It
11 looks like I did sort of a general overview of looking at her
12 skin and muscular-skeletal system and noted some bug bites on
13 her, and then it looks like I did a general external pelvic
14 exam, noting that there was no redness, that the hymen appeared
15 intact, and that there were no lacerations externally and no
16 swelling noted.

17 Q. Doctor, as a general practice, how would you conduct the
18 pelvic examination, the external pelvic examination you
19 described?

20 A. On a child this age, usually what we would do is have her --
21 well, we would probably try and have her lay on the table, but
22 if that was too traumatic, we would have her just lay back in
23 her mother's lap and go into what we call a frog position, where
24 she sort of bends her knees and then just spreads her legs
25 apart.

1 Q. And in conducting this kind of an examination, do you use
2 any instruments or devices?

3 A. There were no instruments used in this exam. If her hymen
4 had been ruptured, we may have used a speculum to view inside.
5 It does look like I did some cultures, you know, to check her
6 for -- I think it's both genitalia and anus cultures were done.

7 Q. Do you know whether or not you conducted a rectal or anal
8 examination of this child?

9 A. I cannot tell from my note whether I did anything more than
10 culture her anus. I have nothing written down about it, so I
11 just -- as I don't remember the case, I can't say.

12 Q. So it's possible that you did, but it's just as likely that
13 you didn't?

14 A. Yeah. I mean, my guess is usually what we did is we just
15 looked at the outside and did not actually do a digital exam
16 just because it was so traumatic.

17 Q. And in looking at the outside, what kinds of things would
18 you be looking for?

19 A. Lacerations, bruising, swelling.

20 Q. And I take it if you noted any such things, those would
21 appear in your report?

22 A. I would imagine so, but I cannot say for certain that I
23 looked since it's not noted one way or the other on the report.

24 Q. How do you go about taking a culture from the anus?

25 A. Normally I would basically spread the buttocks apart and

1 slip the swab in. So I can only imagine that I at least saw it
2 grossly.

3 Q. All right.

4 A. But I did not note it on my record.

5 Q. Doctor, was the facility that you were working at, the
6 University of California Davis in Sacramento, was that a
7 facility that regularly received referrals from law enforcement
8 to conduct these kinds of examinations?

9 A. Frequently.

10 Q. Were kids coming in every day for these kinds of exams?

11 A. Most every day.

12 Q. And during the period of time that you had your rotation in
13 this area, do you know how many examinations you conducted of
14 this type?

15 A. I don't know exactly. I could probably guess that I
16 conducted maybe 15 or 20.

17 Q. Doctor, on the third page of the report, you've indicated
18 that you added some language at the top of the page, the words
19 "Mother said"?

20 A. Uh-huh. Yes.

21 Q. Can you --

22 A. From what I can tell from this record, the child actually
23 did not say anything.

24 Q. In the middle of the page, you have, under the diagnostic
25 conclusion section, the statement, "Child's story consistent

1 with history of molestation." Was that something that was
2 written by the social worker?

3 A. No, I wrote that.

4 Q. Okay.

5 A. But in reality it is in error. It should have said,
6 "Mother's version of child's story consistent with history of
7 molestation."

8 Q. Below that you have the phrase, "No physical findings."
9 Does that refer back to page 2 with regard to the "pelvic within
10 normal limits" and the other notes that you have?

11 A. Yes. I did not find any evidence of either sexual abuse or
12 physical abuse.

13 Q. Doctor, based on your experience having conducted, you
14 believe, perhaps 15 or 20 of these examinations and the training
15 that you received, if Kathryn Spencer, who was five years old,
16 had been fully penetrated vaginally by an adult male, by an
17 adult male penis, would you have expected that there would be
18 some observable trauma to the child?

19 A. Well, I would imagine if she was fully penetrated that her
20 hymen would have appeared abnormal. However, she could have
21 been partially penetrated, and if enough time had elapsed, there
22 would be no physical findings.

23 Q. If this child had been penetrated by as many as four adult
24 males on multiple occasions, in your opinion, would that have
25 made it even more likely that there would have been some

1 observable trauma?

2 A. I would think it would make it more likely, yes.

3 Q. Doctor, when you conducted these examinations, did you have
4 references available to consult if you saw something that
5 appeared abnormal or unusual?

6 A. Yeah. There were reference books available in the clinic.

7 Q. Were there also physicians, attending physicians you could
8 have consulted with if you had seen something that you had
9 questions about?

10 A. Yes. I believe this was conducted during the day, so there
11 would have been attending physicians available.

12 Q. Were there ever occasions where you did consult with an
13 attending physician regarding something you had a question about
14 in one of these kinds of exams?

15 A. I don't recall consulting. But, you know, this was a long
16 time ago. I may have consulted regularly and not remember.

17 Q. Okay.

18 MR. CAMIEL: Doctor, those are all the questions I have
19 for you. Thank you.

20 Mr. Samson or cocounsel will have some questions for you.

21 CROSS-EXAMINATION

22 BY MR. SAMSON:

23 Q. Doctor Magee, my name is John Samson. Can you hear me?

24 A. Yes.

25 Q. I just have a couple of quick questions.

1 You stated that the number of people penetrating the child
2 may make it more likely to have trauma. Would that depend again
3 on the degree and force of penetration?

4 A. Absolutely.

5 Q. So if none of them did more than partial penetration, you
6 would not likely find evidence of trauma?

7 A. It's certainly possible you would find no abnormalities.

8 Q. And these exams were extremely rushed?

9 A. They were rushed. We often actually had three or four kids
10 at a time waiting.

11 Q. And you would not actually have a lot of time to consult
12 with an attending physician during these exams?

13 A. Not routinely, no.

14 Q. I would like to direct you to your notations regarding the
15 child's behavior. You stated the child was cowering in the
16 mother's lap during the exam. Would you consider that normal or
17 abnormal behavior?

18 A. For a five year old, I would consider that abnormal, and
19 particularly with a female physician. Most of them do not
20 cower. Most of them are very interactive.

21 Q. And the fact that the child was refusing to speak and
22 screaming through the exam, would that be abnormal?

23 A. I would consider that abnormal behavior.

24 Q. There was a question of how you typically conducted these
25 exams, and sometimes you would have them on a table and

1 sometimes in the mother's lap. Because you note that the child
2 was cowering in the mother's lap during the examination, would
3 that indicate that the child remained in the mother's lap the
4 whole time?

5 A. I cannot say for certain, but I would say it was more likely
6 we would do it that way.

7 Q. Now, I believe you also testified that you were looking for
8 physical injuries that may have occurred during penetration.
9 Again, the "may have occurred" means they may or may not have,
10 is that correct?

11 A. Yes.

12 Q. And if any lacerations or swelling or erythema or bruises
13 occurred, they could have healed by the time you actually
14 examined the child?

15 A. Correct.

16 Q. And in the absence of --

17 A. I'm sorry. It would depend on how far back she had been
18 abused. But in general, bruising will resolve in a week or two
19 and edema or swelling in only a few days.

20 Q. And the fact that this may have been at least four days and
21 possibly as many as a week or two, that would indicate that
22 these injuries might have healed if they did -- if they had been
23 present at one time?

24 A. Yes.

25 Q. And does the absence of trauma rule out penetration?

1 A. No.

2 MR. SAMSON: Thank you very much, Doctor. That's all I
3 have.

4 THE COURT: Mr. Camiel.

5 REDIRECT EXAMINATION

6 BY MR. CAMIEL:

7 Q. Doctor, this Peter Camiel again.

8 You indicated you would expect bruising to still be present
9 for a week or two after the abuse?

10 A. That is an area that doesn't get a lot of bruising. It gets
11 more swelling and erythema.

12 Q. Okay.

13 A. Bruising on the body, the rest of the body, tends to take a
14 week to ten days to resolve.

15 Q. Doctor, I take it from your earlier testimony you actually
16 don't know how long you took with Kathryn Spencer?

17 A. No, I have no idea.

18 Q. And you don't know whether you examined her on an examining
19 table or in her mother's lap?

20 A. No, I don't recall.

21 MR. CAMIEL: Thank you. I don't have any other
22 questions.

23 MR. SAMSON: No questions, Your Honor.

24 THE COURT: Thank you, Dr. Magee.

25 THE WITNESS: Yes.